

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6714

BILL NUMBER: SB 353

NOTE PREPARED: Feb 24, 2006

BILL AMENDED: Feb 23, 2006

SUBJECT: Alternative Fuel Use and Production.

FIRST AUTHOR: Sen. Weatherwax

FIRST SPONSOR: Rep. Gutwein

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) ***Biodiesel/Ethanol Tax Credits:*** The bill increases the maximum amount of credits that may be granted for biodiesel production, biodiesel blending, and ethanol production and indicates that the Indiana Economic Development Corporation may grant a credit that is less than the maximum permissible statutory credit. It also extends the tax credit for the retail sale of blended biodiesel to 2010.

Special Fuel Provisions: The bill makes changes in certain definitions applicable to the Special Fuels Tax law.

Coal Gasification Technology Investment Tax Credit: The bill extends the tax credit for integrated coal gasification powerplants to investments in fluidized combustion bed technologies.

E85 Product Liability: The bill grants tort and products liability immunity for the misuse of E85 motor fuel in a vehicle that is not equipped to use E85 motor fuel.

Effective Date: Upon passage; January 1, 2005 (retroactive); January 1, 2006 (retroactive); July 1, 2006.

Explanation of State Expenditures: The Department of State Revenue (DOR) would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the changes to the coal gasification technology investment tax credit. The DOR's current level of resources should be sufficient to implement these administrative tasks.

Explanation of State Revenues: ***Biodiesel/Ethanol Tax Credits:*** The bill makes changes to existing tax credits for production of ethanol, biodiesel, and blended biodiesel, and for retail sales of blended biodiesel. The

changes are as follows:

(1) The bill increases the aggregate credit limit from \$20 M to \$50 M for the ethanol production, biodiesel production, and blended biodiesel production credits. The new aggregate limit would apply to all credits provided after December 31, 2004. The amount of additional credits that may be claimed due to the new credit limit is indeterminable and depends on IEDC certification of companies for the production credits. The IEDC certified \$12 M in ethanol production credits in 2005 for four companies, with each company receiving \$3 M in credits. No more ethanol production credits may be certified under current statute. The IEDC has not certified any credits for biodiesel or blended biodiesel production.

(2) The bill eliminates authority for the IEDC to increase the maximum ethanol production credit and the maximum biodiesel production credit that may be awarded to a taxpayer from \$3 M to \$5 M and establishes a graduated credit schedule for the ethanol production credit based on production levels. These changes likely would allow for credits to be provided under the overall cap to more production companies. The credit schedule is presented in the table below.

Ethanol Production Credit	
Maximum Credit	Annual Production Level
\$2 M	At least 40 M gallons, but less than 60 M gallons.
\$3 M	At least 60 M gallons.

(3) The bill moves the sunset date for the blended biodiesel retail sales credit from December 31, 2006, to December 31, 2010. The credits that might be claimed due to extending the time frame of the credit is indeterminable and depends on IEDC certification of sales credits. In 2005, the IEDC did not certify any credits for the retail sale of blended biodiesel.

Coal Gasification Technology Investment Tax Credit: The bill establishes a lesser tax credit for new investment in fluidized bed combustion technology. This change could potentially reduce revenue from the Adjusted Gross Income (AGI) Tax, the Financial Institutions Tax, the Insurance Premiums Tax, and the Utility Receipts Tax when a taxpayer undertakes qualified investment in such facilities. The potential amount of tax credits that may be granted for fluidized bed combustion technology investment is indeterminable and will depend upon review and approval of creditable investment by the IEDC; and determinations by the IURC that the public convenience and necessity requires the installation of the fluidized bed combustion unit.

Background: Biodiesel/Ethanol Tax Credits: Current statute provides credits against a taxpayer's Sales and Use Tax, AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liability for the production of biodiesel, blended biodiesel, and ethanol, and for the retail sale of blended biodiesel. The tax credits are: (1) \$1.00 for each gallon of biodiesel manufactured in Indiana and used to produce blended biodiesel; (2) \$0.02 per gallon of blended biodiesel produced in Indiana using biodiesel produced in Indiana; (3) \$0.125 per gallon of ethanol produced at an eligible facility in Indiana; and (4) \$0.01 per gallon of blended biodiesel sold by Indiana retailers.

Current statute limits the ethanol, biodiesel, and blended biodiesel production credits combined to \$20 M for all taxpayers and all taxable years. Within this overall limit, the credits certified by the IEDC must total at least \$4 M for each credit. Thus, no new credits for ethanol production can be approved under the current limits,

as the IEDC certified \$12 M in ethanol production credits in 2005 (\$3 M each to four companies). In addition, the taxpayer limit for each credit is \$3 M, with provision for the IEDC to increase this limit to \$5 M for the ethanol production credit or the biodiesel production credit.

The Alternative Fuels Association (AFA) reports that one ethanol production facility currently operates in Indiana with a capacity of 102 million gallons per year. The AFA also reports that two facilities are currently under construction in Indiana, each with a 40 million gallon annual capacity. The National Biodiesel Board (NBB) reports that there are currently 45 active biodiesel production plants operating in the U.S. and 53 additional production plants proposed, including two in Indiana. The NBB reports that dedicated biodiesel plants in the U.S. have a total capacity of 60 to 80 million gallons per year, and that an additional 200 million gallons of capacity are available from non-dedicated facilities operated by oleochemical producers. The NBB also reports that a total of 59 biodiesel retailers and 41 biodiesel distributors currently operate in Indiana.

Coal Gasification Technology Investment Tax Credit: The current tax credit may be taken against a taxpayer's tax liability arising under the AGI Tax, Financial Institutions Tax, Insurance Premiums Tax, and Utility Receipts Tax for qualified investment in an integrated coal gasification power plant. The credit is equal to 10% of the first \$500 M in qualified investment, and 5% of the qualified investment exceeding \$500 M. The bill establishes a separate and lesser tax credit for qualified investment in fluidized bed combustion technology. This credit would be equal to 7% of the first \$500 M in qualified investment, and 3% of the qualified investment exceeding \$500 M. The bill also requires credit recipients for investment in: (1) a coal gasification facility or fluidized bed combustion unit primarily serving Indiana retail electric utility consumers to use 100% Indiana coal; and (2) a fluidized bed combustion unit not dedicated to Indiana retail electric utility consumers to use 75% Indiana coal.

Under current statute unchanged by the bill, a taxpayer may take the credit in 10 annual installments beginning with the year in which the taxpayer places the integrated coal gasification power plant into service. The annual credit installment that a taxpayer may claim is equal the lesser of the percentage of the coal utilized during the taxable year in the facility that is Indiana coal multiplied by: (1) 10% of the total credit amount; or (2) the greater of (a) 25% of the taxpayer's total state tax liability for the taxable year or (b) the taxpayer's Utility Receipts Tax liability for the taxable year.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Indiana Economic Development Corporation.

Local Agencies Affected:

Information Sources: Gretchen White, Indiana Economic Development Corporation, (317) 234-3997.

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